IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11463 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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ROHITKUMAR SHANTILAL PARIKH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s):1,MR UT MISHRA for Petitioner(s) : 1,
MR KP RAWAL ASSTT GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/08/2006

ORAL JUDGMENT

1. RULE. The learned A.G.P. waives service of Rule. By consent of the learned counsel, the matter was heard for final disposal.

2. Invoking Articles 14, 16 and 226 of the Constitution, the petitioner has called into question the order dated 3.6.2006 by which he was suspended pending enquiry and his headquarter was also changed from Dahod to Bhuj which is approximately 500 kms. away from Dahod. The petitioner, who was a Malaria Supervisor, has sought limited relief of quashing that part of the impugned order by which his headquarter has been changed in view of the obvious difficulties that the petitioner would face during the period of suspension due to the additional expenditure involved in residing away from his family and in attending and defending himself in the departmental enquiry initiated against him. At the time of first hearing of the petition, the qualified ad-interim relief granted to the petitioner was limited to suspending the operation of the impugned order as far as the transfer was concerned.

3. By filing affidavit of the Under Secretary of Health and Family Welfare Department of the State Government, it is, *inter alia*, stated that the attitude of the petitioner was indicating his non-co-operation; that suspension was not a punishment and, by way of an administrative arrangement to protect the evidence from likely damage by the petitioner and

also to prevent the witnesses from being influenced that it had become necessary to transfer and suspend the petitioner. He has relied upon the Government Instructions dated 18.11.1986 of which a copy is annexed and also produced the chargesheet dated 13.7.2006 issued to the petitioner. Obviously, the chargesheet is issued after the aforesaid order of ad-interim relief.

3.1 Surprisingly, the above deponent has also stated on oath that there are certain serious allegations of financial irregularities and temporary misappropriation of government money against the petitioner and continuance of the petitioner in service was likely to affect the documentary evidence of the case and also likely to influence the witnesses of the case. It is further stated that the impugned order dated 3.6.2006 could not be implemented *“due to the ad-interim relief granted by this Court under its order dated 14.6.2006 and the petitioner has been continued to work at Dahod as the impugned order dated 3.6.2006 has been stayed under order dated 14.6.2006”.* It is further averred that continuance of the petitioner in service at Dahod is likely to affect the documentary evidence and records pertaining to the allegations against the petitioner and the petitioner is likely to

influence the witnesses of the case and that these factors are likely to weaken the case against the petitioner.

4. To say the least, the deponent, an officer of the level of Under Secretary in the Health and Family Welfare Department, has either not read the court's order or completely misread the order and made incorrect and misleading statements in his affidavit. It passes comprehension as to how the petitioner who was suspended on 3.6.2006 could have continued to work by virtue of the order dated 14.6.2006 whereby, only and expressly, the transfer was stayed. Therefore, it can be inferred that, under the cover of the court's order or by complete misreading thereof, the petitioner was favoured by his superior officers in allowing him into the office in defiance of their own orders. The respondents are required to look into this aspect of the matter and take necessary action.

5. With reference to the instructions and guidelines dated 18.11.1996 of the State Government with regard to suspension and transfer of government servants, it was clear that the said instructions were issued on the basis of the judgment of Division Bench of this Court in **J.S.SOLANKI v. PRINCIPAL CONSERVATOR OF FORESTS**

reported in 1986 (1) S.L.R. Page 573. It is categorically held in para 27 of that judgment as under:

> *"27. ....It is not the function of the court to substitute its own decision in place of the decision taken by the government or the concerned authority but if the reasons which weighed for taking the decision are before the court, it can effectively deal with the challenge made by the delinquent. Normally, courts should be slow in interfering with such administrative orders which are of a discretionary nature and if the reasons which weighed with the authority are known, it would assist the court in dealing with the challenge directed against it. We may at the cost of repetition state that the order of suspension-cum-transfer should be very sparingly passed in only those rare cases where transfer or suspension alone is not sufficient to achieve the objective of containing the delinquent's sphere of influence."*

6. Applying the above ratio and the instructions of the government in the facts of the case, it clearly appears that, at the time the impugned order dated 3.6.2006 was made, there was no material whatsoever to suggest that the

petitioner was likely to tamper with the records or influence the witnesses. Instead, the letter of the District Panchayat addressed to the Chief District Medical Officer, written on the previous day, i.e. 2.6.2006, indicated that the petitioner was since long sought to be transferred on account of the complaints against him. That also indicated that the impugned order was punitive and the administrative reasons or the apprehension of tampering with the record or influencing the witnesses were concocted subsequently to justify the order.

7. Apart from the above facts, the learned counsel for the petitioner assured the court that the petitioner did not and will not do anything to tamper with the evidence gathered against him for proving the charges levelled against him. He also expressed readiness of the petitioner to abide by such conditions as may be imposed by the court for allaying the fears of the respondent about tampering of the evidence by the petitioner.

8. In the facts and for the reasons discussed hereinabove, the petition is partly allowed and the impugned order dated 3.6.2006 is quashed to the extent it directs the change of headquarters for the petitioner subject to the

condition that the petitioner shall not enter into any of the offices under the District Development Officer, Panchmahals and shall not tamper with any evidence, oral or documentary, that may be or could be used or produced against him in the departmental enquiry pending against him. It is clarified that the impugned order dated 3.6.2006 was never stayed and is not quashed as far as suspension of the petitioner is concerned. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)